

## **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel, )  
W.A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA, )  
et al. )  
Plaintiffs, )  
V. ) No. 05-CV-329-GKF-PJC  
TYSON FOODS, INC., et al., )  
Defendants. )

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
HAD ON AUGUST 13, 2009  
MOTION HEARING

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Ms. Kelly Hunter Foster  
Assistant Attorney General  
313 N.E. 21st Street  
Oklahoma City, Oklahoma 73105  
  
Mr. David Riggs  
Mr. David P. Page  
Mr. Richard T. Garren  
Riggs Abney Neal Turpen  
Orbison & Lewis  
502 West 6th Street  
Tulsa, Oklahoma 74119

1 (APPEARANCES CONTINUED)

2 For the Plaintiffs: Mr. Robert A. Nance  
3 Ms. Sharon Gentry  
4 Riggs Abney Neal Turpen  
5 Orbison & Lewis  
6 5801 Broadway, Extension 101  
7 Oklahoma City, Oklahoma 73118  
8  
9 Mr. Louis W. Bullock  
10 Bullock Bullock & Blakemore  
11 110 West 7th Street  
12 Suite 770  
13 Tulsa, Oklahoma 74119  
14  
15 Mr. Frederick C. Baker  
16 Ms. Elizabeth Claire Xidis  
17 Motley Rice LLC  
18 28 Bridgeside  
19 P. O. Box 1792  
20 Mount Pleasant, South Carolina 29465

21 For the Tyson Foods Mr. Robert W. George  
22 Defendants: Tyson Foods, Inc.  
23 2210 West Oaklawn Drive  
24 Springdale, Arkansas 72701  
25  
26 Mr. Jay T. Jorgensen  
27 Mr. Gordon D. Todd  
28 Sidley Austin LLP  
29 1501 K Street NW  
30 Washington, D.C. 20005  
31  
32 Mr. Patrick M. Ryan  
33 Ryan Whaley Coldron Shandy, PC  
34 119 North Robinson, Suite 900  
35 Oklahoma City, Oklahoma 73102

36 For the Cargill Mr. John H. Tucker  
37 Defendants: Ms. Theresa N. Hill  
38 Rhodes Hieronymus Jones  
39 Tucker & Gable  
40 100 West 5th Street  
41 Suite 400  
42 Tulsa, Oklahoma 74103

(APPEARANCES CONTINUED)

For the Cargill  
Defendants:

Mr. Delmar R. Ehrich  
& Benson  
90 South 7th Street, Suite 2200  
Minneapolis, Minnesota 55402

For the Defendant  
Simmons Foods:

Mr. John Elrod  
Ms. Vicki Bronson  
Conner & Winters  
Attorneys at Law  
211 East Dickson Street  
Fayetteville, Arkansas 72701

For the Defendant  
Peterson Farms:

Mr. A. Scott McDaniel  
Ms. Nicole Longwell  
McDaniel Hixon Longwell & Acord PLLC  
320 South Boston, Suite 700  
Tulsa, Oklahoma 74103

For the George's  
Defendants:

Mr. Woodson Bassett  
Mr. Vincent O. Chadick  
The Bassett Law Firm  
Post Office Box 3618  
Fayetteville, Arkansas 72701

For the Cal-Maine  
Defendants:

Mr. Robert F. Sanders  
Young Williams P.A.  
P. O. Box 23059  
Jackson, Mississippi 39225

Mr. Robert P. Redemann  
Perrine McGivern Redemann  
Reid Berry & Taylor PLLC  
Post Office Box 1710  
Tulsa, Oklahoma 74101

- - - - -

#### PROCEEDINGS

August 13, 2009

THE COURT: Be seated please. I believe Mr. Jorgensen asked for an additional few minutes as to McGuire, then we need to begin with Sullivan, we'll then rule on this group of experts, McGuire, Sullivan and Taef. I do want to touch upon

1 supported by methodology and sound reasoning, and his analysis  
2 and opinions with respect to private wells are really just  
3 conjecture and speculation and do not meet the reliability  
4 standards required by Daubert and we are urging the Court to  
5 exclude Mr. King's opinions with respect to private wells.

6 THE COURT: Let's assume for the moment just a  
7 hypothetical, that based upon what's heard at trial that the  
8 Court concludes that wells in this particular area, this  
9 specific area of the IRW, are contaminated by chicken litter,  
10 chicken waste. The Court could then take the global estimate  
11 here and determine how many wells were relied upon by Mr. King  
12 to reach the figure of remediation. The Court could compare  
13 that to the number of wells within the area that it determines  
14 are contaminated because of chicken litter and can simply use  
15 simple mathematics to determine the approximate cost. Now once  
16 again, if the Rule 19 order stands, it wouldn't be an order  
17 that you would have to pay it, but it could be a consideration  
18 by the Court determining whether you need to go out and  
19 remediate it; right?

20 MR. BASSETT: Yes, sir. Yes, sir.

21 THE COURT: Why isn't this relevant? In fact, some of  
22 these numbers are so astounding I would think that you would  
23 want them to say, Judge, this is completely inequitable. There  
24 are other ways to -- we'll drill new wells rather than make us  
25 go and remediate the old wells. I mean it seems to me that perhaps

1 this motion is moot and that you want these astronomical  
2 numbers in front of the Court. Am I misunderstanding?

3 MR. BASSETT: Well, Mr. King is -- if that's the case,  
4 if Mr. King is allowed to testify, if he's not kicked out, then  
5 obviously, yes, we will, we will argue that.

6 THE COURT: You could truck in Fizz-O Water at less  
7 cost than some of these estimates; right?

8 MR. BASSETT: Yes, sir, I'm sure you could.

9 THE COURT: I mean why are you even contesting it? I  
10 don't understand.

11 MR. BASSETT: Well --

12 THE COURT: I mean I don't understand. I mean this  
13 just goes into the mix, doesn't it?

14 MR. BASSETT: Based on the Court's analysis right now,  
15 it certainly seems that way but, Your Honor, I agree that our  
16 whole issue.

17 THE COURT: I'm not analyzing anything, I'm just  
18 trying to play the devil's advocate with you.

19 MR. BASSETT: I understand, yes.

20 THE COURT: I mean, I'm just trying to understand why  
21 you're not wanting this in.

22 MR. BASSETT: Well, because our basis is simply that  
23 none of these opinions have a reliable foundation and,  
24 therefore, they shouldn't come in in the first place. When we  
25 -- I will say this, too, Your Honor. When we initially filed

1 this motion, it was certainly with the belief that the  
2 plaintiffs might very well try to present Mr. King's cost  
3 estimates to a jury and obviously that would be -- that would  
4 have been of great concern to us from the standpoint of  
5 potential for prejudice and confusion and that sort of thing.  
6 If it turns out that we just have a bench trial and that Your  
7 Honor that's the trier of fact, that Your Honor could clearly  
8 conduct any further reliability analysis that it wanted to at  
9 the trial, if it chose to do that, and clearly we would have an  
10 opportunity, full opportunity at the cross-examine Mr. King on  
11 the points that I'm making right now and the points that we  
12 have set forth in our motion. And obviously we would -- we  
13 would do that. But, yes, I mean, I understand the point the  
14 Court is making. Some -- a lot of these cost estimates and a  
15 lot of these figures are so over the top. I mean, Mr. King has  
16 got in excess of a billion dollars in potential remediation  
17 costs in his report that the State is proffering here. So yes,  
18 we would certainly cross-examine vigorously and we would  
19 certainly point those things out. So I certainly understand  
20 the point you're making, Your Honor.

21 THE COURT: On the other hand, remediation is very,  
22 very costly, I mean, if the Court is persuaded that remediation  
23 has to occur, it's a costly enterprise.

24 MR. BASSETT: Yes. Well, again, Your Honor, the thing  
25 is we are arguing in our motion that Mr. King's methodology and

1 his conclusions and the opinions that he's reached in this case  
2 are unreliable. What he's done is offer a laundry list of  
3 hypothetical options and he doesn't evaluate whether any of the  
4 remedial options, he doesn't evaluate those options in terms of  
5 their effectiveness and their implement -- whether they could  
6 be implemented. I made that point a little while ago. And,  
7 you know, if they don't work, they can't be effective. He  
8 hasn't -- there's no reliability, there's no foundation there  
9 to support that any of these things are effective, any of the  
10 options or remedial alternatives that he is suggesting to the  
11 Court. So that's why we are arguing, Your Honor, that there is  
12 no reliable foundation for these options, which are hypothetical  
13 in nature, that Mr. King is presenting to the Court.

14 THE COURT: All right, are there other witnesses who  
15 will testify as to the extent of the actual injuries? For  
16 instance, you argue that King bases some of his findings about  
17 the need to replace water wells on one test by the State of 60  
18 wells; is that correct?

19 MR. BASSETT: Yes, sir.

20 THE COURT: Presumably the defendant -- or the  
21 plaintiffs have other experts who are going to testify with  
22 regard to -- and I'm focusing right now on water wells -- on  
23 causation of pollution to water wells; correct?

24 MR. BASSETT: I think, I think they will be presenting  
25 perhaps Dr. Taef in that regard, Your Honor. I know the Court